

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

YADI'EL AMRUM BINYAH,
ex rel. Eugene E. Wade, Jr.,

Plaintiff,

Case No. 3:22-cv-111

vs.

HELEN WALLACE, *et al.*,

Defendants.

District Judge Michael J. Newman
Magistrate Judge Kimberly A. Jolson

ORDER: (1) ADOPTING THE REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE (Doc. No. 7); (2) DISMISSING PLAINTIFF'S COMPLAINT (Doc. No. 1) WITHOUT PREJUDICE; (3) DENYING A CERTIFICATE OF APPEALABILITY; (4) CERTIFYING THAT ANY APPEAL WOULD BE OBJECTIVELY FRIVOLOUS AND FINDING THAT *IN FORMA PAUPERIS* STATUS SHOULD BE DENIED ON APPEAL; AND (5) TERMINATING THIS CASE ON THE DOCKET

This case is before the Court on the Report and Recommendation issued by United States Magistrate Judge Kimberly A. Jolson (Doc. No. 7), to whom this case was referred pursuant to 28 U.S.C. § 636(b). Judge Jolson initially entered a Deficiency Order against Plaintiff, noting that he failed to pay the filing fee or comply with the necessary filing requirements to proceed *in forma pauperis*. Doc. No. 1 at PageID 1. Moreover, Judge Jolson noted that it was unclear whether this action challenged a domestic relations matter, depriving this Court of jurisdiction. *Id.*

Plaintiff partially complied with that Order by submitting an affidavit and certified copy of his prison trust fund account statement. Doc. Nos. 5-2, 5-3. But he failed to file a completed application to proceed *in forma pauperis* and requested that the Court waive the fee. Doc. No. 5 at PageID 58. Judge Jolson then entered a second Deficiency Order, noting that the fee could not be waived and directing Plaintiff to pay the fee. Doc. No. 6 at PageID 100.

More than thirty days have passed since the issuance of that order without any action by Plaintiff. Now, Judge Jolson has recommended that Plaintiff's complaint be dismissed under Fed. R. Civ. P. 41(b) for non-prosecution. *See* Doc. No. 7. No party objected to the Report and Recommendation.

Upon careful *de novo* consideration of the foregoing, the Court determines that the Report and Recommendation should be adopted. Accordingly, it is hereby **ORDERED** that: (1) the Report and Recommendation is **ADOPTED** in full (Doc. No. 7); (2) Plaintiff's complaint (Doc. No. 1) is **DISMISSED WITHOUT PREJUDICE**; (3) **DENIES** Plaintiff a certificate of appealability; (4) **CERTIFIES** that any appeal would be objectively frivolous and finds that Plaintiff should be denied *in forma pauperis* status on appeal; and (5) **TERMINATES** this case on the Court's docket.

IT IS SO ORDERED.

Date: August 17, 2022

s/ Michael J. Newman
Hon. Michael J. Newman
United States District Judge